

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EARNEST C. WOODS, II,

Plaintiff,

v.

ROBERT AYERS, et al.,

Defendants.

No. C 11-4730 JSW (PR)

**ORDER GRANTING LEAVE TO
FILE SECOND AMENDED
COMPLAINT; SCHEDULING
BRIEFING; ON PENDING
MOTIONS**

(Docket Nos. 21, 25)

Plaintiff, a California prisoner proceeding pro se, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983.

Good cause appearing, leave for Plaintiff to file his second amended complaint is GRANTED. *See* Fed. R. Civ. P. 15(a). Because Plaintiff has been given two opportunities to amend, and prejudice to the defendants in defending this action that would be caused by further delay, leave to amend the complaint further will not be granted. Plaintiff's claims against Defendants Wong and Chraft for inadequately reviewing his administrative appeals are DISMISSED for failure to state a cognizable claim for relief. Plaintiff's claims against Defendants Curzon, Coleman, Evans, Engstrom, Chambers, Guzman, and Burkhart are DISMISSED because he has not included them in his Second Amended Complaint as defendants on any of his claims. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992) (amended complaint supersedes prior complaints and defendants not named in amended complaint are no

1 longer defendants); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (same for pro se
2 litigants' amended complaint). Plaintiff's claims against Defendants Ayers, Cahala,
3 Frates, Puu, Lee, Schwartz, Arnold, Curry, Young, Lemon, Holland and Thomas are,
4 when liberally construed, cognizable.

5 Defendants Ayers, Lee, Puu, Schwartz, Curry and Arnold have been served, and
6 have answered the first amended complaint. Within **14 days**, the appearing defendants
7 shall file an amended answer to the second amended complaint.


8 The appearing defendants have also filed a motion to dismiss the case under 28
9 U.S.C. § 1915(g). The motion is deemed to apply to the second amended complaint. If
10 Plaintiff wants to oppose the motion, he must file an opposition on or before **November**
11 **19, 2012**. Defendants **shall** file a reply brief within **14 days** of the date any opposition is
12 filed. The motion, if meritorious, would result in the revocation of Plaintiff's in forma
13 pauperis status and the dismissal of this action as to all defendants if Plaintiff does not
14 pay the filing fee. Consequently, service on the non-appearing Defendants will be
15 ordered when and if the motion to dismiss is denied.

16 Plaintiff's motion for appointment of counsel (docket number 25) is DENIED.
17 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep't of Social*
18 *Services*, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district court only the
19 power to "request" that counsel represent a litigant who is proceeding in forma pauperis.
20 28 U.S.C. § 1915(e)(1). The Court has only the power to ask pro bono counsel to
21 represent plaintiff, not the power to "appoint" counsel. Here, plaintiff has presented his
22 claims adequately and the issues are not particularly complex.

23 Defendants' motion for an extension of time to file a dispositive motion (docket
24 number 21) is GRANTED.

25 IT IS SO ORDERED.

26 DATED: October 23, 2012

27 
28 JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS II,

Case Number: CV11-04730 JSW

Plaintiff,

CERTIFICATE OF SERVICE

v.

ROBERT AYERS et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Earnest C. Woods D 58091
San Quentin Prison
San Quentin, CA 94974

Dated: October 23, 2012



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk